ESTATE OF JESSE J. JAMES

IBIA 80-48-E Decided December 8, 1980

Escheat determination concerning trust property on the public domain.

1. Indian Probate: Escheat

> The Act of Nov. 24, 1942, 56 Stat. 1022 (25 U.S.C. § 373b (1976)) is not ambiguous. It plainly states that where, as here, a public domain allotment exceeding a value of $2,000 lies adjacent to an Indian community and may be advantageously used for Indian purposes, such allotment shall be held in trust by the United States for such Indians as Congress (not the Secretary of the Interior) may designate, where the owner of the allotment dies intestate without heirs eligible to inherit such allotment.

APPEARANCES: Craig J. Dorsay, Esq., Portland, Oregon, and Sande Schmidt, Esq., Burns, Oregon, for petitioner Burns-Paiute Tribe.

OPINION BY CHIEF ADMINISTRATIVE JUDGE HORTON

Jesse J. James, deceased Burns-Paiute, died intestate without heirs on January 12, 1978, possessed of trust property located on the public domain. The estimated value of decedent's public domain allotment (Indian Joe Allotment No. 144-111) was $9,600 as of March 27, 1979.

The Burns-Paiute Tribe, through counsel, seeks an order from the Board of Indian Appeals, on behalf of the Secretary of the Interior, declaring that decedent's trust property be held in trust by the United States for the benefit of the tribe by operation of escheat. According to the tribe, the Indian Joe allotment lies within the original boundaries of the Malheur Reservation and only 12 miles from present tribal land. The Burns-Paiute Tribe submits that acquisition of the Indian Joe allotment will enhance the economic status of the tribe which is land poor.

Congress enacted a statute in 1942 to govern situations such as the above. The Act of November 24, 1942, 56 Stat. 1022, codified at 25 U.S.C. § 373b (1976), provides as follows:

> If an Indian found to have died intestate without heirs was the holder of a restricted allotment or homestead or interest therein on the public domain, the land or interest therein and all accumulated rents, issues, and

> profits therefrom shall escheat to the United States, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder, and the land shall become part of the public domain subject to the payment of such creditors' claims as the Secretary of the Interior may find proper to be paid from the cash on hand or income accruing to said estate; Provided, That if the Secretary determines that the land involved lies within or adjacent to an Indian community and may be advantageously used for Indian purposes, the land or interest therein shall escheat to the United States to be held in trust for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $2,000, and in case of estates exceeding said sum, such estates shall be held in trust by the United States for such Indians as the Congress may on and after November 24, 1942 designate, subject to all valid existing agricultural, surface, and mineral leases and the rights of any person thereunder.

The tribe submits that the above statute is ambiguous. Accordingly, it seeks to prove by reference to the legislative history of the Act that the Secretary is vested with authority to decree that the public domain allotment in question escheat to the Burns-Paiute Tribe as the appropriate disposition of the land. Under traditional canons of interpretation, the legislative history of a statute is irrelevant if the statute is unambiguous. United Air Lines v. McMann, 434 U.S. 192, 199 (1977).

[1] The Board does not agree with the tribe that the Act of November 24, 1942, is ambiguous. The statute plainly states that a public domain allotment, lying within or adjacent to an Indian community and which may be advantageously used for Indian purposes, shall be

held in trust by the United States for such needy Indians as the Secretary of the Interior may designate, where the value of the estate does not exceed $2,000 and where the owner of the allotment dies intestate without heirs eligible to inherit such allotment. As pertinent to the case at bar, the statute provides that a public domain allotment exceeding the value of $2,000 lying within or adjacent to an Indian community and which may be advantageously used for Indian purposes shall be held in trust by the United States for such Indians as Congress may designate, if the owner of the allotment dies without heirs eligible to inherit such allotment. In short, under the factual circumstances of the case at hand, it is for Congress and not the Secretary to decide whether or not the Indian Joe allotment should escheat to the Burns-Paiute Tribe or other Indians.

Based on the record before the Board, and following a full opportunity for individual Indians and Indian groups to state a claim to the property at issue, the Board has no reservation stating that were it within its authority to decree, it would allow the Indian Joe allotment to go to the Burns-Paiute Tribe, rather than reverting to the public domain or being conveyed to other Indians.

Pursuant to the authority delegated to the Board of Indian Appeals by 43 CFR 4.1, and in accordance with the provisions of 25 U.S.C. § 373b

(1976) and 43 CFR 4.205(b), the Bureau of Indian Affairs is instructed to hold the estate of Jesse J. James in trust for such Indians as Congress may hereafter designate.

Wm. Philip Horton
Chief Administrative Judge

I concur:

Franklin Arness
Administrative Judge